

Montana Water Court
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FILED
08/08/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
42B-0017-I-2023
Lockman, Melissa
9.00

IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE RIVER DIVISION
TONGUE RIVER, ABOVE & INCLUDING HANGING WOMAN CREEK (BASIN 42B)
INTERLOCUTORY DECREE

* * * * *

CLAIMANTS: United States of America (Department of
Agriculture Forest Service); Jae Notti; Suzanne
Notti

OBJECTORS: Northern Cheyenne Tribe; United States of
America (Department of Agriculture Forest
Service); United State of America (Bureau of
Indian Affairs)

ON MOTION OF THE WATER COURT

CASE 42B-0017-I-2023

42B 58381-00
42B 58383-00
42B 30144797
42B 30144798
42B 30144800
42B 30144801
42B 30144802
42B 30144803

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

The above-captioned appeared in the Interlocutory Decree for the Tongue River, above and including Hanging Woman Creek (Basin 42B) issued on January 12, 2022. Claims 42B 58381-00 and 42B 58383-00 are owned by and the United States Department of Agriculture, Forest Service (the Forest Service) and were called in on motion of the Water Court.

The remaining claims are owned by Jae and Suzanne Notti. Claim 42B 30144797 received an objection from the Northern Cheyenne Tribe (the Tribe). The remaining claims owned by the Nottis received objections from the Tribe and the Forest Service. The claims also received issue remarks during the DNRC's preparation of the Basin 42B Interlocutory Decree. Issue remarks are notations identifying potential legal or factual issues with water rights and the Water Court is required to resolve these potential issues.

FINDINGS OF FACT

1. The parties filed a stipulation resolving the Tribe and the Forest Service's objections to the Notti's claims. (Doc.¹ 8.00).

2. The stipulation requests claims 42B 30144797, 42B 30144798, 42B 30144800, 42B 30144801, 42B 30144802, and 42B 30144803 be dismissed. Withdrawals for each claim signed by the Nottis are attached to the stipulation.

42B 58381-00

3. Claim 42B 58381-00 is for stock water use of Rimrock Spring in the SENESE of Section 15, T7S, R43E, Rosebud County.

4. Claim 42B 30144802 was decreed with the following issue remark:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT APPEAR TO BE DUPLICATE FILINGS.
IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED. 30144802, 58381.

5. Because claim 42B 58381-00 did not receive the same duplicate filing issue remark, the Court called the claim in on motion so the issue remark could be resolved.

6. The withdrawal of claim 42B 30144802 would resolve the on motion issues.

¹ "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

42B 58383-00

7. Claim 42B 58383-00 is for stock water use of Lacy Spring in the SENESW of Section 24, T7S, R43E, Rosebud County.

8. Claim 42B 30144800 was decreed with the following issue remark:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT APPEAR TO BE DUPLICATE FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED. 30144800, 58383 00.

9. Because claim 42B 58383-00 did not receive the same duplicate filing issue remark, the Court called the claim in on motion so the issue remark could be resolved.

10. The withdrawal of claim 42B 30144800 would resolve the on motion issues.

PRINCIPLES OF LAW

1. If a claimant agrees to reduce or limit a claim, the Water Court may accept the reduction or limitation without reviewing further evidence, unless an unresolved issue remark remains. Rule 17(c), W.R.Adj.R.

2. The Water Court is not bound by parties' settlement agreements. Any settlement reached by the parties is subject to review and approval by the Water Court. Rule 17(a), W.R.Adj.R.

CONCLUSIONS OF LAW

1. The stipulation filed by the parties resolves the Tribe and the Forest Service's objections to claims 42B 30144797, 42B 30144798, 42B 30144800, 42B 30144801, 42B 30144802, and 42B 30144803.

2. Dismissal of claim 42B 30144802 resolves the on motion issues raised for claim 42B 58381-00.

3. Dismissal of claim 42B 30144800 resolves the on motion issues raised for claim 42B 58383-00.

RECOMMENDATIONS

1. Claims 42B 30144797, 42B 30144798, 42B 30144800, 42B 30144801, 42B 30144802, and 42B 30144803 should be dismissed.

2. The elements of claims 42B 58381-00 and 42B 58383-00 should remain as they appeared in the Basin 42B Interlocutory Decree.

A post decree abstract of each water right claim reflecting the recommended changes is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

Jae Notti
Suzanne Notti
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Otter, MT 59062

Service via Electronic Mail

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
TONGUE RIVER, ABOVE & INCLUDING HANGING WOMAN CREEK
BASIN 42B

Water Right Number: 42B 58381-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804 7203

Priority Date: SEPTEMBER 1, 1880

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: 4.49 GPM

Volume: THIS WATER RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: RIMROCK SPRING

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SENESE	15	7S	43E	ROSEBUD

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: SPRING BOX

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SENESE	15	7S	43E	ROSEBUD

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
TONGUE RIVER, ABOVE & INCLUDING HANGING WOMAN CREEK
BASIN 42B

Water Right Number: 42B 58383-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804 7203

Priority Date: SEPTEMBER 1, 1880

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: 4.49 GPM

Volume: THIS WATER RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: SPRING, UNNAMED TRIBUTARY OF CLARK DRAW

Source Type: GROUNDWATER
ALSO KNOWN AS LACY SPRING

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SENE SW	24	7S	43E	ROSEBUD

Period of Diversion: MAY 1 TO NOVEMBER 30

Diversion Means: SPRING BOX

Period of Use: MAY 1 TO NOVEMBER 30

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SENE SW	24	7S	43E	ROSEBUD

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
TONGUE RIVER, ABOVE & INCLUDING HANGING WOMAN CREEK
BASIN 42B

Water Right Number: **42B 30144797** STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: **DISMISSED**

Owners: JAE NOTTI
 416 OTTER DECKER RD
 OTTER, MT 59062

 SUZANNE NOTTI
 416 OTTER DECKER RD
 OTTER, MT 59062

Priority Date:

Type of Historical Right:

Purpose (use): STOCK

Flow Rate:

Volume:

Source Name: HANGING WOMAN CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
TONGUE RIVER, ABOVE & INCLUDING HANGING WOMAN CREEK
BASIN 42B

Water Right Number: **42B 30144798** STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: **DISMISSED**

Owners: JAE NOTTI
 416 OTTER DECKER RD
 OTTER, MT 59062

 SUZANNE NOTTI
 416 OTTER DECKER RD
 OTTER, MT 59062

Priority Date:

Type of Historical Right:

Purpose (use): STOCK

Flow Rate:

Volume:

Source Name: SPRING, UNNAMED TRIBUTARY OF LEE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
TONGUE RIVER, ABOVE & INCLUDING HANGING WOMAN CREEK
BASIN 42B

Water Right Number: **42B 30144800** STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: **DISMISSED**

Owners: JAE NOTTI
 416 OTTER DECKER RD
 OTTER, MT 59062

 SUZANNE NOTTI
 416 OTTER DECKER RD
 OTTER, MT 59062

Priority Date:

Type of Historical Right:

Purpose (use): STOCK

Flow Rate:

Volume:

Source Name: SPRING, UNNAMED TRIBUTARY OF LEE CREEK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
TONGUE RIVER, ABOVE & INCLUDING HANGING WOMAN CREEK
BASIN 42B

Water Right Number: **42B 30144801** STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: **DISMISSED**

Owners: JAE NOTTI
 416 OTTER DECKER RD
 OTTER, MT 59062

 SUZANNE NOTTI
 416 OTTER DECKER RD
 OTTER, MT 59062

Priority Date:

Type of Historical Right:

Purpose (use): STOCK

Flow Rate:

Volume:

Source Name: LEE CREEK, SOUTH FORK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
TONGUE RIVER, ABOVE & INCLUDING HANGING WOMAN CREEK
BASIN 42B

Water Right Number: **42B 30144802** STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: **DISMISSED**

Owners: JAE NOTTI
 416 OTTER DECKER RD
 OTTER, MT 59062

 SUZANNE NOTTI
 416 OTTER DECKER RD
 OTTER, MT 59062

Priority Date:

Type of Historical Right:

Purpose (use): STOCK

Flow Rate:

Volume:

Source Name: RIMROCK SPRING

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
TONGUE RIVER, ABOVE & INCLUDING HANGING WOMAN CREEK
BASIN 42B

Water Right Number: **42B 30144803** STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: **DISMISSED**

Owners: JAE NOTTI
 416 OTTER DECKER RD
 OTTER, MT 59062

 SUZANNE NOTTI
 416 OTTER DECKER RD
 OTTER, MT 59062

Priority Date:

Type of Historical Right:

Purpose (use): STOCK

Flow Rate:

Volume:

Source Name: HANGING WOMAN CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.